

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 95- 16

RECEIVED

JAN 23 1995

In the Matter of  
Streamlining the Commission's Antenna  
Structure Clearance Procedure

and

Revision of Part 17 of the Commission's  
Rules Concerning Construction, Marking,  
and Lighting of Antenna Structures

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
WT Docket No. 95-5

# NOTICE OF PROPOSED RULE MAKING

Adopted: January 12, 1995;

Released: January 20, 1995

Comment Date: March 21, 1995

Reply Comment Date: April 20, 1995

By the Commission:

## I. INTRODUCTION

1. This Notice of Proposed Rule Making (Notice) proposes to streamline the Commission's antenna structure<sup>1</sup> clearance process, replacing the current clearance procedures which apply to licensees and permittees, with a uniform registration process for structure owners. As part of this proceeding, we propose to revise Part 17 of the Commission's Rules, "Construction, Marking, and Lighting of Antenna Structures," (Part 17) in keeping with updated recommendations by the Federal Aviation Administration (FAA). Further, we are proposing to revise applicable sections of the Commission's Rules, making owners primarily responsible for antenna structures which require painting and/or lighting. We believe that these proposals will clarify our rules, expedite the processing of authorizations involving FAA

---

<sup>1</sup> The term "antenna structures" is defined in Section 17.2(a) of the Commission's Rules, 47 C.F.R. § 17.2(a), as, "...the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon."

coordination, and reduce certain Commission filings by a 12 to 1 ratio.<sup>2</sup>

2. The Commission and the FAA each have the statutory responsibility of ensuring that antenna structures do not present a hazard to air safety. Section 303(q) of the Communications Act of 1934, as amended (Communications Act), authorizes the Commission to "require the painting and/or illumination of radio towers" in cases where there is a "reasonable possibility" that an antenna structure may cause a hazard to air navigation.<sup>3</sup> Similarly, Section 1501 of the Federal Aviation Act authorizes the FAA to require that persons proposing to erect a structure provide notice to the FAA, when such notice will promote air safety. In its efforts to promote safe air commerce, the FAA periodically publishes Advisory Circulars, two of which set forth its recommendations for painting and lighting of such structures.<sup>4</sup> In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to: 1) make antenna structure owners, as well as Commission licensees and permittees, responsible for the painting and lighting of antenna structures, and 2) provide that non-licensee antenna structure owners may be subject to forfeiture for violations of painting or lighting requirements as specified by the Commission.<sup>5</sup>

3. Since the late 1950's, the Commission has worked in concert with the FAA to promote air safety through the antenna structure clearance process. Currently, each applicant proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height or that may interfere with a nearby airport runway must notify the FAA of proposed construction.<sup>6</sup> The FAA determines whether the antenna structure constitutes a potential hazard and may recommend appropriate painting and lighting for the structure.<sup>7</sup> The

---

<sup>2</sup> See paragraph 16, *infra*.

<sup>3</sup> See 47 U.S.C. §303(q).

<sup>4</sup> See e.g. Obstruction Marking and Lighting (AC 70/7460-1H) released in August of 1991, and Specification for Obstruction Lighting Equipment (AC 150/5345-43D) released in July of 1988.

<sup>5</sup> See Pub. L. No. 102-538, 106 Stat. 3533, enacted October 27, 1992. In essence, Section 503(b)(5) allows the Commission to assess forfeitures for violations of Section 303(q) of the Communications Act if the owner has been previously notified regarding specific painting and/or lighting obligations. This authority is now reflected in 47 C.F.R. § 1.80(d).

<sup>6</sup> See 14 C.F.R. § 77.13.

<sup>7</sup> For instance, the FAA may recommend that the proposed structure be equipped with red beacons and/or white strobe lights and be painted with white and aviation orange bands. In addition, Part 17 of the Commission's rules sets forth the requirements for painting and lighting of antenna structures, specifying the number, type and location of such lights based upon the height of the structure as well as the colors and pattern to be used in painting the

Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on subject Commission licensees and permittees.<sup>8</sup>

4. We believe that our antenna structure clearance process could be modified to significantly improve the speed of disposal of certain Commission authorizations while reducing burdens on industry. Therefore, in this proceeding, we intend to replace the current clearance process with rules requiring registration of antenna structures by owners. In order to simplify the clearance process, we propose to revise FCC Form 854 to provide a specific application for registration to be filed by the antenna structure owner, instead of each licensee or permittee.<sup>9</sup> The registration will set forth coordinates, height, a unique registration number, and painting and/or lighting specifications, where applicable. The revised FCC Form 854 will also be used by the antenna structure owner to: (1) reflect an increase/decrease in the height of the structure; (2) correct coordinates; (3) reflect a change in existing painting and lighting specifications; (4) notify the Commission of the dismantlement of the structure; or (5) notify the Commission of a change in ownership. In revising FCC Form 854, we emphasize that antenna structure registration will not, in any way, constitute a Commission authorization to transmit radio signals from the structure, nor relieve the owner of responsibility for compliance with applicable local or State laws. Additionally, we are proposing to revise Part 17 to reflect recent changes to the two FAA Advisory Circulars. Further, we intend to implement statutory language holding antenna structure owners primarily responsible for compliance with Commission painting and lighting specifications. In Appendix B, we are setting forth related revisions of Parts 0, 1, 17, 21, 22, 23, 25, 73, 74, 78, 80, 87, 90, 95 and 97 of our Rules.<sup>10</sup> We seek comment on the registration proposal discussed in this Notice, the proposed rule amendments, as well as any related matter pertaining to antenna structures used by Commission licensees or permittees.

---

structure.

<sup>8</sup> In most cases, painting and/or lighting requirements are specifically listed on each subject licensee's or permittee's station authorization.

<sup>9</sup> The current edition of FCC Form 854, "Request for Antenna Height Clearance and Obstruction Marking and Lighting Specifications," is filed with the Commission by certain applicants in order to obtain painting and/or lighting requirements. In Appendix C, we are setting forth the revised FCC Form 854, its instructions, as well as the Registration (FCC Form 854R).

<sup>10</sup> Because of the ongoing proceedings related to personal communications services, we are not proposing to amend Part 24 at this time. We are not, however, exempting personal communications services from the proposals described herein. See paragraph 12, *infra*.

## II. DISCUSSION

### A. ANTENNA STRUCTURE REGISTRATION

5. As part of our ongoing efforts to improve all Commission activities, we have conducted an inter-Bureau study of the processes employed in clearing antenna structures in the various services.<sup>11</sup> Presently, the clearance process requires identifying the coordinates and height of each structure and obtaining a determination from the FAA as to whether or not the structure is a potential hazard to air navigation. If the FAA determines that a proposed antenna structure is a potential hazard to air navigation because of its height or location, it may recommend that the structure height be decreased, recommend painting and lighting specifications, or both. The FAA, however, has no authority to require compliance with its recommendations. The Commission does have such authority and generally specifies the FAA recommendations as part of the station authorization.

6. We believe that the public interest requires adoption of a uniform procedure for registering antenna structures and the creation of a common database listing structure information.<sup>12</sup> Currently, the Commission has two types of databases which store antenna structure information. Painting and lighting information for each antenna structure is recorded in an "antenna clearance system" database. Station operating parameters and licensee information are maintained separately in various service databases by each operating Bureau. These service databases may or may not list painting and lighting requirements. Thus, we believe that a uniform registration procedure and a common database will yield the following benefits. First, it will speed processing of any request involving a change in coordinates, structure height, or change in painting and/or lighting.<sup>13</sup> Second, during investigations related

---

<sup>11</sup> The Support Services Branch of the Wireless Telecommunications Bureau in Gettysburg, Pennsylvania, processes antenna structure clearances for the Common Carrier Bureau, the International Bureau, the Mass Media Bureau, and the Wireless Telecommunications Bureau, and provides antenna structure information to the Compliance and Information Bureau.

<sup>12</sup> On December 19, 1991, the law firm of Fletcher, Heald & Hildreth filed a petition for rule making proposing a procedure for Mass Media Bureau licensees in which an increase/decrease in structure height would not require an application from each licensee or permittee on the structure. The proposals outlined in this Notice would permit the structure owner to file a single form to modify antenna structure data. As such, the Fletcher, Heald & Hildreth petition is being encompassed by this proceeding.

<sup>13</sup> Each operating Bureau has a different method of processing such requests. Specifically, Bureau processes differ in terms of forms used, notification procedures, information required, and information displayed on each licensee's authorization. For example, in the Mass Media Bureau, a change in coordinates or height of the antenna

to air safety or radio frequency interference, the Commission and the licensees in question may need to identify each licensee on a given antenna structure. The proposed rules would eliminate such lengthy searches of multiple databases. Third, some databases may contain inconsistent information about a single antenna structure because licensees on the structure may have submitted different site coordinates or structure parameters. A common database would facilitate detection and correction of such conflicts by the Commission and licensees. Fourth, Commission records focus on licensees and generally contain no information regarding antenna structure owners. The proposed registration process would identify each antenna structure owner in order to enforce the new Congressionally mandated provisions related to owners.<sup>14</sup> The following proposals will simplify the antenna clearance process for both industry and the Commission.

7. We propose a streamlined procedure for registering each antenna structure requiring notice of proposed construction to the FAA.<sup>15</sup> This means that a single entity, the antenna structure owner, would be primarily responsible for: (1) registering the antenna structure with the FCC; (2) maintaining the painting and lighting of the antenna structure in accordance with the Commission's Rules; (3) notifying the Commission of any changes in height, coordinates, ownership, painting, or lighting of the structure; and (4) notifying the Commission upon dismantling the structure.<sup>16</sup> Although licensees and permittees have never been required to register their antenna structures, each licensee on subject structures was previously required to file with the Commission for antenna structure clearance and comply with (2) through (4) listed above. Therefore, the proposal would not impose a greater net

---

structure requires filing a lengthy application, while a change in painting or lighting requires only a notification. Both the application and notification result in reissuance of the station authorization. Processing such requests greatly increases the Commission's annual workload. For instance, in 1993 the Mass Media Bureau received 3,468 applications and 540 notifications, the Common Carrier Bureau processed 1,404 such applications, while the Wireless Telecommunications Bureau handled 11,496 applications, all involving antenna structures. In a related context, the Compliance and Information Bureau undertook 1,296 investigations involving existing antenna structures in which accurate antenna structure information was not readily available.

<sup>14</sup> See paragraph 20, *infra*.

<sup>15</sup> The FAA must be notified of any proposed construction or alteration involving structures which exceed 60.96 meters (200 feet) in height above ground level or structures which may interfere with aircraft landing at a nearby airport. Certain structures, however, are exempt from this notification requirement. See 47 C.F.R. §§ 17.7 and 17.14.

<sup>16</sup> Some licensees are currently permitted to have agreements whereby a single entity, not limited to Commission licensees, may monitor and maintain a structure. See 47 C.F.R. 90.441(b). Our proposal will simply centralize all aspects of antenna structure maintenance to mirror the agreements that already have evolved out of convenience in the private sector.

filing burden on the public, but would instead decrease the number of entities affected by these requirements. Under this proposal, antenna structure owners who fail to comply with the requirements set forth in Part 17 may be subject to administrative sanctions.<sup>17</sup> Currently, licensees are individually responsible for antenna structure maintenance, even in cases where they neither own nor have a legal right to maintain the structure.

### **Who must register**

8. There are approximately 500,000 antenna structures in the United States and of those, over 70,000 were subject to FAA notification prior to construction.<sup>18</sup> Under the proposed rules, the owner of each antenna structure requiring FAA notification would be required to file a registration application with the Commission for each applicable existing or proposed antenna structure.<sup>19</sup> The Commission would then issue a unique Antenna Structure Registration Number (Registration Number) to the owner. We further propose to require that the Registration Number be conspicuously displayed on or around the antenna structure and be used for identification purposes during all aspects of the licensing process by each licensee whose facilities are located on the structure.

### **How to register**

9. We propose to require the antenna structure owner to obtain a Registration Number by filing revised FCC Form 854.<sup>20</sup> The owner would then be required to provide a copy of the Registration, FCC Form 854R, to all prospective and existing tenant licensees.<sup>21</sup> Thereafter, each licensee or permittee would file a copy of the Registration with the station

---

<sup>17</sup> See 47 U.S.C § 503(b)(5).

<sup>18</sup> As of November, 1994, there are over 500,000 distinct coordinates listed in the Commission's Cross Master Frequency System (XFS database), each equivalent to a single antenna structure. Of those, over 70,000 are listed in the Commission's Antenna Clearance System database, which contains information regarding those structures subject to the FAA notification requirements.

<sup>19</sup> Owners whose structures are exempted from current requirements under 47 C.F.R. 17.17 will nevertheless be required to comply with the proposed Registration requirements.

<sup>20</sup> Revised FCC Form 854, "Application for Antenna Structure Registration," would be filed for the purpose of registering structures used for wire or radio communication services by any licensee or permittee in the United States, to make changes to an existing registered structure, or to notify the Commission of the dismantlement of a structure.

<sup>21</sup> The term "tenant licensee," in the context of a multi-use antenna structure, refers to any licensee using the structure under a Commission station authorization. In many cases, the antenna structure owner may also be a tenant licensee.

records where it would be available to authorized Commission inspectors upon request. Upon implementation, subject licensees would be required to submit a Registration Number upon application for a new, modified, or renewed authorization.<sup>22</sup> The Commission would then ascertain whether the coordinates and height of the antenna structure, as supplied on the application, are consistent with the Registration. If so, a separate antenna clearance procedure would not be necessary, as painting and/or lighting would already be prescribed for the structure during the Registration process. In revising FCC Form 854, we again emphasize that Registration will not, in any way, constitute a Commission authorization to transmit radio signals from the structure.

10. Additionally, under our proposal, each owner would be required to submit revised FCC Form 854 prior to specified modifications of the antenna structure. These specified modifications to the structure are: a change in painting and lighting as recommended by the FAA; an increase or decrease in structure height (above ground level and/or above mean sea level); a change in ownership of the structure; and upon dismantlement of the structure. Further, we propose that revised Form 854 be used to notify the Commission of any corrections to antenna structure coordinates.

#### **When to register**

11. We propose to begin Registration by January 1, 1996. The implementation process must provide a reasonable speed of service to our customers while maintaining a simple registration scheme. We ask that commenters consider the advantages and disadvantages of the following alternatives and submit specific proposals regarding the size of initial filing windows and other implementation options not listed below.

- (a) Geographical implementation: The United States and its possessions may be divided into any number of regions by utilizing natural boundaries, state lines, related groups of states, or sections of longitude and latitude. The Commission could then set filing windows for the registration of antenna structures by region. The Commission could permit simultaneous registration of commonly owned antenna structures, prior to their required filing window, in cases where doing so would unify the filings of an owner or group of owners.

---

<sup>22</sup> Because cellular and PCS licenses are granted on a system basis and may not contain specific site information, this requirement would not apply to the initial grant of a cellular or PCS license. See paragraph 13, *infra*. Further, we intend to revise applicable FCC Forms to include questions related to Registration. We intend to coordinate application and registration forms in order to eliminate duplicative questions. Once Registration is fully implemented, we would not grant an application if the Registration Number is not included or does not contain a valid explanation why Registration is unnecessary.

- (b) Implementation by antenna structure height: Antenna structures may be divided into groups by height above ground level. The Commission could then set filing windows by structure height. The Commission could permit simultaneous registration of commonly owned antenna structures, prior to their required filing window, in cases where doing so would unify the filings of an owner or group of owners.
- (c) Implementation upon renewal: This alternative would spread full implementation over a ten year period, to correspond with the longest license term applicable. Upon implementation, each tenant licensee on an antenna structure requiring registration would have to submit a Registration Number in order to apply for license renewal. Under this scheme, registration would be permitted at any time.

12. This proposal would apply to all structures which require FAA notification, regardless of whether the stations involved are licensed individually, by geographic service area, or employ an AM directional array.<sup>23</sup> Therefore, we seek specific comments regarding the effects of this proposal on cellular systems, Personal Communications Services (PCS) systems, AM broadcast stations, or any other service that does not specify each antenna site on the authorization. Under our proposal, a separate Registration would be required for each applicable structure in the licensed service area. For example, cellular authorizations issued after January 1, 1995 will only depict external cell sites which make up the outer contours of the cellular system, i.e. the Cellular Geographic Service Area (CGSA). Internal cell sites will not appear on the authorization. Further, PCS system authorizations, with few exceptions, will not specify transmitter locations. Thus, authorizations in these services will contain no painting, lighting or marking requirements for those locations not indicated on the authorization. Notwithstanding such system licensing procedures, under this proposal each antenna structure requiring FAA notification would have to be registered with the Commission.

13. Under the proposed rules, all new antenna structures would have to be registered prior to construction. Cellular and PCS applicants, however, are not generally required to specify the locations of all system antenna structures prior to the grant of a system authorization. Therefore, the proposal provides for such geographic system licensing as follows: (1) cellular and PCS applicants or applicants in any other service that are not required to specify each antenna site prior to licensing, would not be required to provide a Registration Number prior to the grant of a system authorization, and (2) each subject antenna structure would have to be registered prior to construction. Applicants in all other services,

---

<sup>23</sup> Many AM broadcast stations are authorized on the basis of a directional antenna. An AM directional array involves multiple antenna structures. The reference coordinates for such an AM station mark the center of the array, rather than the exact location of an antenna structure. Under our proposal, each structure in the array would be registered.



however, would be required to supply a Registration Number on their applications. In some instances, the owner may be in the process of registering the antenna structure when a prospective tenant is applying for a station license. In these cases, the Registration Number may not yet be available to the tenant. Therefore, the respective licensing bureaus would ensure that such a structure is registered prior to considering the construction permit or license application.

### **Economic Impact**

14. The current procedure for processing applications and notifications requiring antenna structure clearance imposes a significant economic impact both on industry and the Commission. As an illustration, we have calculated the Commission cost on the basis of one employee hour per application or notification involving an existing antenna structure. In regard to the antenna structure clearance procedure discussed in paragraph 5, *supra*, the employee hour consists of finding the correct coordinates in the Commission's Tower Query database. If the coordinates are not in the database, it is necessary to confirm with the Support Services Branch in Gettysburg that they have the correct antenna structure information, whether this information is consistent with the application/notification, and whether the FAA has responded with the correct coordinates, height and/or obstruction marking and lighting. Under the proposed simplified procedure, these steps would not be necessary because the antenna structure would have already been cleared by Registration and be uniquely identified by its Registration Number.

15. In determining the actual cost to the Commission, the average hourly salary, per application, of the employees involved was multiplied by the number of applications, notifications, or field investigations processed last year involving an existing antenna structure. Based on 1993 data, as outlined in footnote 13, *supra*, costs exceed \$500,000 annually. We have also informally surveyed six engineering consulting firms who estimate that expenditures for preparing multiple application filings involving the same antenna structure exceed \$320,000 annually.

16. If adopted, Registration should streamline the regulatory process to cut costs for both the public and the federal government, improve safety in air navigation, and help speed resolution of interference complaints. The primary benefit will be a drastic reduction in the number of Commission filings. Under our proposal, each licensee or permittee at a multi-use site would not have to file an application or notification when only a change in antenna structure height or painting and lighting is involved. Instead, only the owner would be required to file with the Commission.<sup>24</sup> The proposed system should also hasten processing

---

<sup>24</sup> On average, there are 12 separate stations authorized on each antenna structure. Therefore, when a change in height, painting or lighting occurs, the Commission would generally realize a 12 to 1 reduction in filings. Only the antenna structure owner would be required to modify the Registration.

of applications which require FAA notification. Additionally, making antenna structure data available to both the federal government and the public will make it easier to provide aviators with accurate and timely information regarding new or dismantled antenna structures. Further, a single Registration database containing ownership information will allow the Commission and the FAA to react swiftly to remedy lighting outages and interference complaints. We seek comments on the proposed rule amendments and the following:

- a) In certain instances, owners voluntarily paint and/or illuminate their antenna structures, even though the FAA and the Commission have not recommended or required such action. The proposed rules, however, do not require the registration of voluntarily painted and/or illuminated antenna structures. What would be the advantages and/or disadvantages of requiring registration of such structures?
- b) Who will require access to the new database created by our proposal? What types of information should be included and what method of access is required (e.g., on-line access, CD-ROM, quarterly hard-copy updates)?
- c) What would be the advantages and/or disadvantages of permitting owners to register electronically? What would be the minimum hardware and/or software requirements necessary for registration?
- d) A renewal process may be necessary in order to maintain the integrity of the Registration database. What would be the advantages and/or disadvantages of requiring each antenna structure owner to periodically renew the antenna registration? What would be a reasonable renewal period?
- e) Processing Registration forms, developing a new Registration database, and providing database access to other government agencies and industry will place an economic burden on the federal government. Should a Registration fee be imposed?
- f) The Commission must often resolve complaints related to the effects of radio frequency energy levels at particular antenna structure sites. A comprehensive compilation of all antenna structures would increase Commission efficiency in these studies. Therefore, we request comments on the advantages and/or disadvantages of requiring all antenna structures to be registered with the Commission. Alternatively, what would be the advantages and/or disadvantages of extending the proposed Registration criteria to include all higher powered stations, such as those of the mass media broadcasting services and common carrier microwave services?

- g) Both Section 503(b) of the Communications Act and Section 1.80(d) of the Commission's Rules require that antenna structure owners be given notice of their obligations under Section 303(q) of the Communications Act prior to the issuance of a forfeiture penalty. What form of prior notice would be reasonable to inform owners of their obligation to register, paint, and light their structures (e.g., publication in the Federal Register, receipt of the Antenna Structure Registration, or a letter to the owner)?
- h) What changes, if any, should be made to the Commission's environmental rules in light of these proposals? See 47 C.F.R. §§ 1.1301-1.1319. In particular, we seek comment on whether Registration constitutes a Commission "action" or "undertaking" under the federal environmental laws and, if so, what changes, if any, should be made to the Commission's environmental rules?
- i) Nearly all of the Commission's application forms ask for antenna structure location in terms of degrees, minutes, and seconds and height in meters. What would be the advantages and/or disadvantages of amending Part 17 to require that owners specify location to the nearest second and height to the nearest meter? What methods could be used to make measurements of this accuracy and what would be the cost to each owner? Is this accuracy needed for all antenna structures or should the Commission consider each radio service separately?

## B. PART 17 UPDATE

17. In general, parties who intend to construct or modify antenna structures must seek a determination from the FAA as to whether the proposed structure is a potential hazard to air navigation.<sup>25</sup> In cases where an antenna structure may pose a hazard to aircraft, the FAA may recommend painting and/or lighting in accordance with two of its Advisory Circulars, Obstruction Marking and Lighting (AC 70/7460-1H), August 1991, and Specification for Obstruction Lighting Equipment (AC 150/5345-43D), July 1988.<sup>26</sup> The Commission has the authority to specify painting and lighting requirements other than those listed in Part 17 in cases where current guidelines are inadequate to ensure air safety.<sup>27</sup> Pursuant to this authority, the Commission generally relies on the FAA's recommendation, and not Part 17 of its rules, when prescribing painting and/or lighting for each licensee on a given antenna structure. For example, in cases where the FAA recommends equivalent or

---

<sup>25</sup> See 47 C.F.R. §§ 17.7 and 17.14 and 14 C.F.R. §§ 77.11-19.

<sup>26</sup> FAA Advisory Circulars are available upon request, free of charge, from Department of Transportation, Utilization and Storage Section (Publications), M443.2, 400 7th Street SW, Washington, DC 20591, telephone (202) 366-0039 or (202) 366-0451.

<sup>27</sup> See 47 C.F.R. 17.22.

more stringent lighting requirements, the Commission utilizes the authority set forth in 47 C.F.R. § 17.22 to require lighting specifications not described in Part 17.

18. Because we already heavily rely on the FAA's recommendations,<sup>28</sup> we propose to amend Part 17 of the Commission's Rules to incorporate by reference the recommendations found in the FAA Advisory Circulars AC 70/7460-1H, August 1991 and AC 150/5345-43D, July 1988.<sup>29</sup> Incorporating the Advisory Circulars directly eliminates the need for Commission staff to identify changes to the Circulars, interpret such changes, and revise Part 17 to include the new language. In the future, if the FAA makes substantive amendments to either of the Advisory Circulars, the Commission may initiate a notice and comment proceeding to incorporate the new version of the Circular. For example, the FAA may amend AC 70/7460-1H, recommending an additional red obstruction light for structures over 46 meters (150 feet) above ground level. Alternatively, if the FAA makes nonsubstantive changes to either of the Advisory Circulars, the Chief, Wireless Telecommunications Bureau may issue an Order incorporating the updated Advisory Circular. For example, the FAA may revise AC 150/5345-43D in order to update the address for obtaining copies of FAA Advisory Circulars. Because such a change has no effect on Commission licensees, this proposal would eliminate the mention of specific painting and lighting configurations for antenna structures in Part 17 and eliminate the need to routinely amend the Commission's Rules each time FAA recommendations are revised.

19. We tentatively conclude that this proposal is in the public interest in that it updates the Commission's specific painting and lighting requirements to reflect recent FAA air safety recommendations. Because there are differences between the current FAA Advisory Circulars and Part 17, we are proposing to grandfather the present painting and lighting requirements of existing structures for 10 years.<sup>30</sup> Under our proposal, owners of antenna structures that received clearance prior to January 1, 1996, may retain the old painting and/or lighting requirements upon Registration and would not have to comply with the Advisory

---

<sup>28</sup> In the past, the Commission has drawn upon the FAA's expertise in order to formulate rules concerning antenna structure painting and lighting. See, for example, Docket 16474, 32 FR 11266, August 3, 1967.

<sup>29</sup> In general, documents to be incorporated by reference must meet the requirements of 1 C.F.R. Part 51. Accordingly, the Commission is currently seeking authorization from the Director of the Federal Register to incorporate by reference the two FAA Advisory Circulars.

<sup>30</sup> For example, AC 70/7460-1H recommends dual lamps in mid-level beacons for certain structures, while Part 17 requires only a single lamp for the same structures. See AC 70/7460-1H, Chapter 5, August 1991, and 47 C.F.R. Part 17, respectively.

Circulars until January 1, 2006.<sup>31</sup> Further, each owner registering a new antenna structure on or after January 1, 1996, would be assigned painting and/or lighting requirements referenced in Part 17 at the time of Registration. The Commission may amend Part 17 to reflect updated FAA Advisory Circulars; however, antenna structures may continue to be painted and/or lighted in accordance with the requirements found on the Registration for an indefinite period. We seek comment on the proposed rule amendments.

### C. NEW REQUIREMENTS FOR ANTENNA STRUCTURE OWNERS

20. On average, there are 12 licensees authorized to transmit from each antenna structure requiring painting and/or lighting. Currently, each licensee on a multi-use antenna structure is separately and jointly responsible for the installation and maintenance of the structure in accordance with Part 17.<sup>32</sup> The Commission has found, however, that oftentimes the antenna structure owner is not a Commission licensee and therefore, has no vested interest in compliance. This poses a hazard to air commerce in cases where all Commission licensees vacate an antenna structure and the owner fails to paint, light, or dismantle the structure.

21. As discussed previously, Congress remedied this situation by enacting Public Law No. 102-538, 106 Stat. 3533, which, among other things, amended the Communications Act to make owners, as well as Commission licensees or permittees, responsible for the painting and lighting of antenna structures.<sup>33</sup> While still recognizing the ultimate shared responsibility of licensees, permittees, and owners, we are proposing rules to hold the owner primarily responsible, in the first instance, for the installation and maintenance of painting and/or lighting for each antenna structure. This means that the Commission would look first toward antenna structure owners to ensure that their structures are painted and lighted in accordance with Part 17. In cases where reliance on the structure owner proves ineffective, the Commission would turn toward the tenant licensees and permittees to ensure that the structure is properly painted and lighted. For instance, if the structure owner cannot be reached, the Commission would have the option to require tenant licensees and permittees to maintain the structure. By focusing on the single entity which has control over all aspects of the antenna structure, the Commission hopes to speed resolution of problems associated with lighting outages and vacant antenna structures. Under this proposal, antenna structure owners

---

<sup>31</sup> In order to change the Registration to reflect the Advisory Circulars in force, an owner must file FAA Form 7460-1, obtain a new FAA recommendation for painting and/or lighting the antenna structure, and file FCC Form 854 to amend the Registration.

<sup>32</sup> As stated previously, approximately 70,000 antenna structures are required to be painted and/or illuminated. See footnote 18 *supra*. Currently, most tenant licensees' radio station authorizations contains specific painting and/or lighting requirements. Presently, the Commission holds each tenant licensee individually accountable under the Commission's Rules.

<sup>33</sup> See paragraph 2, *supra*.

who fail to comply with the requirements set forth in Part 17 may be subject to administrative sanctions.<sup>34</sup> Therefore, we propose to amend Part 17, making antenna structure owners primarily responsible for structure painting and lighting.

22. Because aviators often use lighted antenna structures as landmarks,<sup>35</sup> it is necessary for the lighting of all antenna structures to be consistent and maintained to ensure safety of air navigation. Therefore, in addition to the amendments discussed above, we intend to require owners whose antenna structures do not require lighting, but choose to voluntarily light their structures, to follow the lighting installation and maintenance specifications set forth in Part 17. Such owners would be free to discontinue lighting their structures at any time. We believe this lighting requirement may be necessary to insure that aviators do not misinterpret the height of structures that are lit voluntarily, such as an antenna structure with lower level lights, but no top beacon. We seek comment on the proposed rule amendments.

#### D. Summary

23. In this Notice, we are proposing to: implement Antenna Structure Registration, revise the Commission's Rules regarding antenna structure painting and lighting to reference the FAA's Advisory Circulars; and, implement statutory requirements set forth by Congress to make antenna structure owners primarily responsible for structure operation and maintenance. By these actions, we seek to ease the burden on Commission resources and expedite application and notification processing, streamline regulations to ease the public and governmental burdens associated with processing certain applications, unify federal regulations regarding antenna structure painting and lighting, increase safety in air navigation, and establish that primary responsibility for antenna structure operation and maintenance rests with the owner. We seek comment on the proposed rule amendments and policies discussed above.

---

<sup>34</sup> See 47 U.S.C. § 503(b)(5). See also, Notice of Apparent Liability for Forfeiture, adopted December 16, 1994, 9 FCC Rcd. \_\_\_\_ (1994), wherein the Commission issued an apparent liability for forfeiture to Centel Cellular of North Carolina Limited Partnership in the amount of \$3,000,000 for various apparent violations of Part 17.

<sup>35</sup> See Airman's Information Manual: Basic Flight Information and ATC Procedures (BFAP), U.S. Department of Transportation, Federal Aviation Administration, paragraphs 2-13 and 7-73, February 4, 1993.

### III. PROCEDURAL MATTERS

#### INITIAL REGULATORY FLEXIBILITY ANALYSIS

24. An Initial Regulatory Flexibility Analysis is contained in Appendix A to this Notice of Proposed Rule Making.

25. Accordingly, we adopt this Notice of Proposed Rule Making under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested persons may file comments on or before March 21, 1995, and may file reply comments on or before April 20, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send your comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

26. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.206(a).

27. For further information, contact Roger Noel of the Wireless Telecommunications Bureau at (202) 418-0680 or Robert Greenberg of the Mass Media Bureau at (202) 418-2720.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

Attachments

## **APPENDIX A**

### **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this Notice. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 25, supra. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601-612 (1981).

#### **A. Reason for Action**

2. The Commission proposes to: 1) institute a procedure to register certain antenna structures, used by Commission licensees and permittees, which require notice to the FAA of proposed construction, 2) revise the Commission's painting and lighting requirements to incorporate by reference FAA Advisory Circulars AC 70/7460-1H (August 1991) and AC 150/5345-43D (July 1988), and 3) hold antenna structure owners primarily responsible for compliance with the Commission's painting and lighting requirements.

#### **B. Objectives**

3. We seek to: 1) reduce the number of filings to the Commission regarding changes to antenna structures, 2) expedite application and notification processing, 3) unify and streamline federal painting and lighting regulations to ease the public and governmental burdens associated with processing certain applications, 4) increase safety in air navigation.

#### **C. Legal Basis**

4. The proposed actions are authorized under Sections 4(i), 4(j) and 303(r) of the Communications Act 47 U.S.C. §§ 154(i), 154(j), and 303(r).



**D. Reporting, Recordkeeping and Other Compliance Requirements**

5. The proposed revision of 47 C.F.R. Part 17 would require certain antenna structure owners to register their structures and to comply with the Commission's painting and lighting requirements. Additionally, each owner would have to provide a copy of the Antenna Structure Registration to all tenant licensees and post the structure's Registration Number at the site. Further, the proposed rules eliminate the requirement for certain licensees and permittees to individually file with the Commission to amend structure height or painting and lighting specifications. Most licensees and permittees, however, would have to provide the Registration Number of the structure from which they intend to transmit when filing for a new, modified, or renewed authorization.

**E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules**

6. None.

**F. Description, Potential Impact, and Small Entities Involved**

7. Any rule change requiring a small business antenna structure owner to file an application for Registration could affect small a business. However, the overall impact, if any, will be minimal because the proposed registration process will eliminate the need for many small business licensees and permittees on an antenna structure to file certain applications and notifications. The Commission will further examine the impact of any rule changes on small entities after evaluating the comments in this proceeding.

**G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives**

8. None.

## **APPENDIX B**

### **PROPOSED RULES**

Chapter I of Title 47 of the Code of Federal Regulations, Parts 0, 1, 17, 21, 22, 23, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 are proposed to be amended as follows:

#### **I. Part 0 - Commission Organization**

1. The authority citation for Part 0 continues to read as follows:

**AUTHORITY:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.131 is amended by revising paragraph (j) to read as follows:

§ 0.131 Functions of the Bureau.

\* \* \* \* \*

(j) Administers the Commission's commercial radio operator program (part 13) and the Commission's program for registration, construction, marking and lighting of antenna structures (part 17).

\* \* \* \* \*

## **II. Part 1 - Practice and Procedure**

1. The authority citation for Part 1 continues to read as follows:

**AUTHORITY:** 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552, 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.61 is amended by deleting paragraphs (c), (d), (e), and (f) and revising paragraphs (a) and (b) to read as follows:

### **§ 1.61 Procedures for handling applications requiring special aeronautical study.**

- (a) Antenna Structure Registration is conducted by the Wireless Telecommunications Bureau as follows:

- (1) Each antenna structure owner that must notify the FAA of proposed construction using FAA Form 7460-1 shall, upon proposing new or modified construction, register that antenna structure with the Wireless Telecommunications Bureau using FCC Form 854.

- (2) Upon receipt of FCC Form 854, and attached final FAA determination of "no hazard," the Bureau prescribes antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation and returns a completed Antenna Structure Registration (FCC Form 854R) to the applicant. If the proposed structure is disapproved the applicant is so advised.

- (b) Each operating Bureau examines the applications for Commission authorization for which it is responsible to ensure compliance with FAA notification procedures as well as Commission Antenna Structure Registration as follows:

- (1) If Antenna Structure Registration is required, the operating Bureau reviews the application for the Antenna Structure Registration Number and proceeds as follows:

- (i) If the application contains the Antenna Structure Registration Number or if the applicant seeks a Cellular or PCS system authorization, the operating Bureau processes the application.

- (ii) If the application does not contain the Antenna Structure Registration Number, but the structure owner has already filed FCC Form 854, the operating Bureau places the application on hold until Registration can be confirmed, so long as the applicant exhibits due diligence in filing.

(iii) If the application does not contain the Antenna Structure Registration Number, and the structure owner has not filed FCC Form 854, the operating Bureau notifies the applicant that FCC Form 854 must be filed and places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(2) If Antenna Structure Registration is not required, the operating Bureau processes the application.

\* \* \* \* \*

### III. Part 17 - Construction, Marking, and Lighting of Antenna Structures

1. The authority citation for Part 17 continues to read as follows:

**AUTHORITY:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

2. Section 17.1 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 17.1 Basis and purpose.

(a) \* \* \*and necessity would be served thereby, and to require the painting, and/or illumination of antenna structures if and when in its judgment such structures constitute\* \* \*

(b) \* \* \*part is to prescribe certain procedures for antenna structure registration and standards with respect\* \* \*

\* \* \* \* \*

3. Section 17.2 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

#### § 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure includes the\* \* \*

(b) \* \* \*

(c) *Antenna Structure Registration Number.* A unique number, issued by the Commission during the registration process, which identifies an antenna structure and must be used in later filings.

(d) *Owner.* For the purposes of this part, an antenna structure owner is either the entity that owns the structure or the entity designated by the owner to maintain the antenna structure in accordance with this part. The antenna structure owner, however, is ultimately responsible for compliance with the requirements of this part.

4. Section 17.4 is amended by revising paragraphs (a), (b), and (d), deleting paragraphs (f) and (h), and redesignating paragraph (g) as paragraph (f) to read as follows:

**§ 17.4 Commission consideration of proposed antenna structure with respect to possible hazard to air navigation.**

(a) All applications are reviewed to determine whether there is a requirement that the applicant file a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the Federal Aviation Administration.

(b) \* \* \* will be advised to do so unless the FCC Form 854 includes an determination of "no hazard" or notes that FAA Form 7460-1 has already been filed.

\* \* \* \* \*

(d) \* \* \* is deemed not to involve a hazard to air navigation and the Antenna Registration will be processed accordingly: Provided, that the FAA determination of "no hazard" had not expired prior to the date FCC Form 854 was filed.

\* \* \* \* \*

5. A new Section 17.5 is added to read as follows:

**§ 17.5 Antenna Structure Registration.**

Effective January 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. For proposed structures, registration must take place prior to construction. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission.

(a) Each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure must submit a copy of the FAA determination of "no hazard." A copy of a FAA determination of "no hazard" is not required if FAA notification is not required under Section 17.7 of this chapter. The height of the structure will include the highest point of the structure including any obstruction lighting or lighting arrester.

(c) The Commission shall issue, to the owner, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure owner shall provide a copy of Form 854R to each tenant licensee and permittee. The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible from the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure.

6. A new Section 17.6 is added to read as follows:

**§ 17.6 Responsibility of Commission licensees and permittees.**

In the event of default by the antenna structure owner, each licensee or permittee authorized on an antenna structure shall be responsible for ensuring that the structure complies with the requirements of this part.

7. Section 17.14 is amended by revising paragraph (a) to read as follows:

**§ 17.14 Certain antenna structures exempt from notification to the FAA.**

\* \* \* \* \*

(a) \* \* \*topographic features of equal or greater height, and would be located in the congested area\* \* \*

\* \* \* \* \*

8. Section 17.17 is amended by revising paragraph (a) to read as follows:

**§ 17.17 Existing structures.**

(a) The requirements found in this Part related to painting and lighting of antenna structures shall not apply to those structures authorized prior to September 5, 1967. The Antenna Structure Registration requirements found in Section 17.5 of this Part, however, shall apply to all antenna structures, regardless of prior authorization.

\* \* \* \* \*

9. Section 17.23 is amended by replacing the prior text with the following to read as follows:

**§ 17.23 Specifications for painting and lighting antenna structures.**

Except as provided in Section 17.25 of this chapter, each antenna structure to be registered on or after January 1, 1996, must conform to the FAA's painting and lighting recommendations set forth on the structure's FAA determination of "no hazard," as referenced in the following FAA Advisory Circulars: AC 70/7460-1H, "Obstruction Marking and Lighting," August 1, 1991, and AC 150/5345-43D, "Specification for Obstruction Lighting Equipment," July 15, 1988. These documents are incorporated by reference in accordance with 5 U.S.C. 552(a). The documents contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory. The Advisory Circulars listed above are available for inspection at the Commission Headquarters in Washington, DC, or may be obtained from Department of Transportation, Utilization and Storage Section (Publications), M443.2, 400 7th Street SW, Washington, DC 20590, telephone (202) 366-0039 or (202) 366-0451.

10. Sections 17.24 through 17.42 are deleted from this Part.

11. Sections 17.43, 17.45, 17.47, 17.48, 17.49, 17.50, 17.51, 17.53, 17.54, 17.56, 17.57, and 17.58 are renumbered as 17.25, 17.27, 17.29, 17.31, 17.33, 17.35, 17.37, 17.39, 17.41, 17.43, 17.45, and 17.47 respectively.



12. The new Section 17.25 is amended by revising the title, revising paragraph (a), deleting paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b) to read as follows:

**§ 17.25 Painting and lighting of existing structures.**

(a) Effective January 1, 1996, each antenna structure required to be painted and/or lighted under this part must do so in accordance with one of the following:

- (1) the FAA Advisory Circulars listed in Section 17.23 of this chapter;
- (2) the FAA Advisory Circulars listed on the structure's Antenna Structure Registration (FCC Form 854R); or,
- (3) until January 1, 2006, the painting and lighting requirements assigned by the Commission.

\* \* \* \* \*

13. A new Section 17.26 is added to read as follows:

**§ 17.26 Voluntary lighting of antenna structures.**

Voluntary lighting of an antenna structure is authorized if lighted and maintained in accordance with the requirements of this part.